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International Convention for the Protection of All Persons from Enforced Disappearance

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Committee on Enforced Disappearances

Report on requests for urgent action submitted under article 30 of the Convention*

A. Introduction

1. Pursuant to rules 57 and 58 of the Committee's rules of procedure (CED/C/1), any requests for urgent action that are submitted under article 30 of the Convention are to be brought to the attention of the Committee for its consideration. The full text of any such request may be made available in the language of submission to any member of the Committee upon request by that member. The present report summarizes the main issues addressed by the rapporteurs on urgent measures in relation to the requests for urgent action received by the Committee under article 30 of the Convention and the decisions taken in that regard since the eleventh session of the Committee. It was adopted by the Committee on 16 March 2017.

B. Requests for urgent action received since the eleventh session of the Committee

2. In its note on requests for urgent action issued for its eleventh session, the Committee set out the decisions taken on the 342 requests for urgent action registered up to 11 October 2016. From that date to 18 January 2017, the Committee received 21 new requests for urgent action, of which 17 have been registered. The 17 requests registered relate to events that occurred in Argentina and Mexico. The present report is accompanied by a list of urgent actions registered as at 20 March 2017.

3. As at the time of writing, the Committee had registered a total of 359 requests for urgent action, distributed by year and country as follows:

Table
Urgent action registered, by year and by country

Year	Argentina	*Brazil*	*Cambodia*	*Colombia*	*Iraq*	*Mexico*	*Morocco*	*Total*
2012	-	-	-	-	-	5	-	5
2013	-	-	-	1	-	5[a]	-	6
2014	-	1	1	1	5	43	-	51
2015	-	-	-	3	42	166	-	211

* Adopted by the Committee at its twelfth session (6-17 March 2017).

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2016	-	-	-	4	21	58	1	68
2017[b]	1	-	-	-	-	-	-	1
Total	**1**	**1**	**1**	**9**	**68**	**277**	**1**	**359**

[a] Urgent action No. 9/2013 refers to two persons and is therefore counted as two urgent actions.

[b] As of 18 January 2017.

C. Matters related to registration criteria and the scope of urgent actions

1. Requests that did not meet the registration criteria

4. Most of the requests for urgent action submitted since the eleventh session met the admissibility criteria when first submitted. However, four of these requests were not registered because the alleged victims were located before the requests could be registered, a few hours after they had been sent by the authors.

2. Requests for urgent action without information regarding potential perpetrators or alleging the possible involvement of non-State actors

5. As at previous sessions, the identity of the perpetrators of the disappearance remains unknown in most cases. The authors put forward certain theories, mainly based on statements by witnesses or on the context in which the disappearances occurred. The main challenge occurs when the requests submitted make clear reference to the possible involvement of non-State actors, without any kind of support or acquiescence.

6. The following examples are noteworthy in this connection.

(a) The authors of one of the requests for urgent action put forward a number of theories, including the possibility that the victim's disappearance occurred as a result of a personal issue with her ex-boyfriend. In another case, the authors referred to a fight between the alleged victim and another individual regarding a plot of land. However, in both cases, the authors emphasized that the allegations were mere assumptions and that "in the context" the possible involvement of State agents could not be ruled out.

(b) In another case, the authors did not put forward any theory explicitly referring to the participation of the State party, but it is clear from the request for urgent action that the disappeared persons are social leaders in conflict with State actors.

7. As a result, the following steps were taken:

(a) Considering that the possible participation by action, support or acquiescence on the part of State officials could not be confirmed until the investigation had been carried out, the two aforementioned requests for urgent action were registered, and the State party was asked for information regarding the investigative actions taken to locate the victims.

(b) In the case of social leaders, the rapporteurs considered that even where the Committee was not in a position to put forward a hypothesis regarding the possible involvement of State agents in the events in question, the note sent to the State party included all available information regarding the victims' membership in various circles and their most recent meetings with State officials.

8. In the light of the foregoing, the rapporteurs recommend the following:

(a) The inclusion of two new criteria for the registration of urgent action requests under article 30 of the Convention: in cases where there is a lack of clarity regarding the perpetrators of a disappearance, an urgent action will be registered where:

(i) The possible involvement of non-State actors — without support or acquiescence — is a mere theory, which may be neither confirmed nor dismissed without a thorough investigation by the competent authorities.

(ii) The disappeared person has experienced conflict or tension or has a relationship with State actors which, considering the context of the events, allows for the theory of an enforced disappearance.

(b) In either case, if the information provided by the parties in the course of the urgent action procedure shows that there is no involvement of State agents, including support or acquiescence, the Committee will close the urgent action procedure.

3. Requests for urgent action registered after the perpetrators have been identified: the scope of urgent actions with regard to investigations into crimes and the identification of perpetrators

9. One of the requests for urgent action was submitted in a somewhat particular context as compared to most other requests registered. In this case the victim was disappeared in November 2013. Family members submitted a complaint to the competent authorities. As a result of the investigations conducted, three police officers were tried and convicted for the disappearance. However, the victim's whereabouts remain unknown. In addition, at the time that the request was submitted, the authors expressed their concern that, according to the information available, another police officer who had potentially been involved in the events was still at large. It is also possible that the three police officers detained may soon be released, even though the fate and whereabouts of the victim have not been clarified.

10. Action taken: in this case, the facts allowed the Committee to make a clear distinction between the investigation into the criminal responsibility of the perpetrators and the search for the disappeared person, two items about which there is often confusion on the part of the complainants or the State party concerned. In the notice of registration of the urgent action, the Committee requested the State party to:

(a) Adopt all measures necessary in order to search for and locate the victim;

(b) Ensure that any decisions taken with regard to the case do not foster impunity or result in the loss of evidence needed to locate the victim;

(c) Take all steps necessary to find the fourth police officer with alleged involvement in the events and to execute the arrest warrant issued against him.

11. In conclusion, in the context of urgent actions, the rapporteurs highlighted the importance of limiting the role of the Committee to the issues that fall within its competence under article 30 of the Convention. It should be made clear that the issue of criminal responsibility is not within the Committee's competence under article 30. However, the rapporteurs consider that references to investigations into the crime and its perpetrators are relevant in the vast majority of cases, as such investigations often result in findings that facilitate the location of victims (if the identity of the perpetrator and the exact chain of events are known, it is easier to find relevant information for locating the disappeared person).

D. The process after registration of urgent action requests: developments observed since the eleventh session (up to 18 January 2017)

1. Interaction with States parties

12. The Committee maintains contact with States parties through their respective permanent missions, primarily by means of notes verbales. From time to time (urgent situations or where clarification is needed regarding a case involving the urgent action procedure), meetings have been held between representatives of a permanent mission and the rapporteurs or with the Committee secretariat, representing the rapporteurs.

13. In several requests for urgent action, the authors expressed concern that the authorities in charge of the search and investigation were not aware of the urgent actions registered or of the Committee's recommendations. Pursuant to a decision taken by the plenary at its eleventh session, the secretariat contacted the permanent missions of the two States parties with respect to which the Committee had registered the largest number of urgent actions (Mexico and Iraq), with a view to discussing options in that regard. To date, such meetings have not resulted in the establishment of a channel of direct contact with the relevant authorities in the States parties.

2. Replies of the States parties

14. States parties continue to respond to the great majority of urgent actions registered. When they do not, they are sent reminders. At its eleventh session, the Committee decided to limit the frequency of reminders in cases where a State party does not respond to the Committee's notes.

15. Since the eleventh session, the secretariat has acted on this decision, in accordance with the following rules:

(a) If the State party does not respond, a maximum of three reminders are sent;

(b) In cases where the State party's failure to respond occurs in relation to the first urgent action registered with regard to events that occurred in that State party: if, after a third reminder, the State has still not responded, a meeting of the rapporteurs (or the secretariat, representing the rapporteurs) and the permanent mission is convened;

(c) In cases where the State party's failure to respond occurs in relation to a registered urgent action concerning events that allegedly occurred in that State party and additional urgent actions have already been registered in connection with that State party, a meeting of the rapporteurs (or the secretariat, representing the rapporteurs) and the permanent mission will be convened only if there are particular circumstances that suggest that a meeting with the permanent mission could be useful;

(d) In all other cases, a fourth reminder letter is sent. In this letter, the Committee refers to the three notes that were previously sent and reminds the State party of its treaty obligation to submit information within the time limit set by the Committee, in accordance with article 30 (2) and (3) of the Convention. The State party is also informed that if the Committee does not receive a response within the time limit indicated, it may decide to make this information public in its session report on urgent actions and in its next report to the General Assembly. This decision is taken at the Committee's next meeting;

(e) Whatever the decision taken with regard to the inclusion of information on the lack of response by the State party, the frequency of reminders sent will be limited (to only one every six months) and the Committee will review the situation at every session in the event a response has been provided.

16. In the period covered by the present report, a fourth reminder was sent in respect of 23 urgent actions registered with regard to events in Iraq. During the twelfth session, the Committee held a bilateral meeting with the Permanent Mission of Iraq to give the State party an opportunity to explain why it has not been in a position to respond to the Committee's notes. Once the Committee had clarified certain aspects of the urgent action procedure, the State party undertook to send information in the weeks following the session on the urgent actions in question.

17. In terms of the content of States parties' replies, the Committee observed the same trends as those highlighted in the report adopted at the Committee's eleventh session (see CED/C/11/3). The Committee noted, specifically, a failure to respond to the Committee's questions and recommendations and a failure to provide background information. However, in several cases, the information provided by the State party in the context of urgent actions gave the authors access to key information about search and investigation procedures to which they had not been granted access previously.

18. Recommendation of the rapporteurs: increase opportunities for interaction and training in coordination with the national authorities on the procedure and objectives of urgent actions, in collaboration with the field offices of the Office of the High Commissioner for Human Rights (OHCHR) and the treaty body capacity-building programme, in order to raise awareness about the scope and objectives of the urgent action procedure.

3. Interaction with authors

19. The secretariat is in constant contact with the authors of urgent action requests, mainly by means of letters sent on behalf of the Committee, but also more directly, by e-

mail and telephone. On the basis of the Committee's contact with authors, a few trends may be observed.

20. Several authors highlighted the importance of the support of the Committee which, following several unsuccessful attempts at contacting the national authorities, has proven a receptive contact point. In some cases, the authors (mainly family members) requested direct support from the Committee to serve as an intermediary before the national authorities. In such cases, the Secretariat always seeks to support individuals, while respecting the Committee's competence under article 30 of the Convention.

4. Responses from the authors

21. In most cases, authors expressed their frustration regarding the lack of progress in the implementation of the State's duty to conduct searches and investigations (see section E above).

22. In some cases, authors requested the Committee to lend its support in specific ways. The following are examples of such requests and the rapporteurs' response thereto:

(a) In one urgent action, the author sent a note informing the Committee that a request for protective measures had been rejected by one of the authorities with potential competence for ensuring the protection of persons (National Protection Unit). The note from the authority responsible for such protection indicated that the case had been referred to the national police, which was also competent in some cases. The author requested the Committee to intervene in order to request the author's protection under the relevant national programme. The rapporteurs concluded that the Committee was not competent to make decisions regarding the State authority in charge of protection, except where the provision of such protection would clearly endanger an individual's safety. In this particular case, the authors did not submit any information in that regard.

(b) In another urgent action case, the author asked the Committee to request the State party to investigate, as a matter of urgency, movements in the Facebook personal account of the disappeared person, as messages had been received that indicated that the account had been active. The Committee decided that an investigation into the account in question would be useful, as it might provide information on the location of the disappeared person. It therefore asked the State party to proceed with the investigation as part of the necessary measures to search for and locate the disappeared person.

(c) In three urgent actions, the authors called the Committee very frequently, requesting material and psychological support. In these cases, the Committee always took the time to listen and to respond to questions about procedures, while specifying the limits of the Committee's mandate. The OHCHR country office also receives visits from authors and responds to their concerns.

23. In some of the urgent action requests registered, the authors have not sent comments on the State party's observations. This has limited the Committee's options with regard to the requests in question. Nevertheless, in accordance with article 30 (4) of the Convention, these cases for urgent action remain open.

24. This occurs mainly in two situations:

(a) Situation 1: in six of the urgent action requests submitted by non-governmental organizations (NGOs), the NGO had difficulties maintaining contact with the relatives of the disappeared persons or did not have access to the case files. In those cases, the Committee sent reminders to the authors. In the case of two urgent actions, after a year without a response from the authors, the rapporteurs considered it necessary to send a follow-up letter to the State party to request an update on the progress of the investigation and search for the disappeared persons. A copy of the follow-up letter was sent to the authors. The authors then resumed contact with the secretariat, expressing their appreciation for the letter and informing it that the letter had made it possible for them to resume contact with the authorities in charge of the investigation;

(b) Situation 2: in other cases, the authors of requests have not responded because they are not in a position to follow up: they may not be able to write or it may be

difficult for them to access the Internet. After sending three reminders, the secretariat contacted some of the authors by telephone to discuss ways in which they might send comments on the State party's observations, either orally or by other means. In two of the urgent actions, the secretariat held a conference call with the authors to get their comments. Given the large number of urgent actions, this option can be used only on an exceptional basis.

25. In view of the above, the rapporteurs recommend the adoption of a new rule of procedure for the handling of cases in which the authors do not respond to the Committee's notes:

(a) Three reminders are sent to the author;

(b) If the author has not replied within three months of the third reminder, the secretariat will attempt to locate the author through other means, and will inquire as to his or her reasons for not responding to the Committee;

(c) If the author states that it is not in a position to respond in writing, but that it has information to share with the Committee, the secretariat will attempt to obtain such information orally (e.g. by telephone) and will send a follow-up note to the State party, in the light of the information provided by the author;

(d) If, six months after the third reminder, the author cannot be located or has no information available, the Committee will send a note to the State party on the basis of the information available and provide it with a new deadline for sending updated information on the case.

E. Recurrent concerns highlighted in the urgent action requests registered

26. Lack of action by the authorities in charge of the search and investigation: in most cases, authors highlighted the lack of action by the State authorities in charge of the investigation and the search for the disappeared persons. The concerns expressed relate primarily to five situations:

(a) Failure by the authorities to take action within the 72 hours following a disappearance: in more than 25 urgent action cases, the authors highlighted their concern at the authorities' refusal to intervene in the 72 hours following the disappearance in question. In all the cases concerned, the Committee highlighted its concern at the authorities' refusal to take action within the 72 hours following the disappearance. In one of these cases the Committee recommended to the State party that it should take the necessary measures "to ensure that any complaint of enforced disappearance should be examined without delay by the authorities that receive them, in accordance with article 12 of the Convention".

(b) Lack of a search and investigation strategy: in nearly all the urgent action requests registered, the information provided by States parties and authors revealed the lack of a search and investigation strategy. In these cases, the Committee reminds States parties of their treaty obligations under articles 12 and 24 of the Convention, on the assumption that the investigation of enforced disappearances may lead to information that is necessary in searching for and locating the victims.

(c) Failure to apply court decisions handed down in respect of certain cases: in 12 urgent actions, the authors indicate that court decisions have not been applied by the competent authorities, owing to either lack of resources or their potential direct involvement in or links to the events. In four of these cases, the authors reported the authorities' failure to act on court decisions several months after arrest warrants had been issued against the alleged perpetrators of the disappearances in question, despite the presence of the State agents concerned. The notes sent to the State party highlighted the Committee's concern with regard to the failure to implement the court decisions and recalled the State party's treaty obligations in that regard.

(d) Failure to conduct in situ investigations: in around 19 urgent actions, the authors highlighted their concern at the fact that the authorities in charge of the investigation often limited their actions to sending requests for information to shelters,

hospitals and other medical facilities, and detention centres, which in the end did not lead to relevant information. They also pointed out that despite the fact that such requests for information often contain instructions for conducting such investigations through in situ visits, the instructions had been ignored. In these cases, the Committee recommended the State party to ensure that the competent authorities (i) made full use of their powers, including the adoption of urgent measures, to request the authorities concerned to provide all the information required in the context of the investigation or proceedings involved in the search for the missing persons; and (ii) took steps to carry out an in situ investigation with a view to ensuring an effective search, which does not consist solely in sending letters to various authorities and should not be based solely on the information contained in the State party's records.

(e) Flawed use of available evidence: in the vast majority of the urgent action requests registered, the authors expressed their frustration at the lack of action by the authorities to use and comprehensively examine all of the evidence available. For instance, the authors frequently complained of the limited use or flawed analysis by the authorities of information about telephone or e-mail networks; of partial searches of locations that could potentially contain relevant evidence; of the lack of analysis of skeletal remains; and of some authorities' refusal to interview witnesses identified by the families and relatives of the disappeared persons. In these cases, the Committee analysed the information available. Once the information had been verified, the Committee conveyed the relevant concerns and invited the authorities in charge of the search and investigation to undertake the necessary investigative actions.

27. Referral of investigations to non-specialized units: authors frequently expressed concern at the referral of investigations to units that did not specialize in the investigation of enforced disappearances. For example, a number of cases were assigned to units specializing in the investigation of organized crime. In these cases, the Committee asked the State party to clarify the reasons for such case referrals and requested information with a view to determining whether the referrals were detrimental to the investigations into an enforced disappearance, which was the remit of other units or if other units also were competent to investigate leads that pointed to a possible enforced disappearance under the terms of the Convention.

28. Lack of inter-agency coordination: in nearly all the urgent action requests registered, the authors expressed concern at the lack of inter-agency coordination among the authorities in charge of the cases. In federal States, a lack of coordination between state and federal authorities was also observed; this in turn had an obvious impact on the effectiveness of the search and investigation process. In these cases, the Committee reminded States parties of the need to ensure inter-agency coordination among all the authorities involved in the search and investigation process.

29. Role of the military criminal courts: regarding the urgent action cases in which members of the military authorities were involved as potential perpetrators or as victims, the authors consistently underlined their concern about the role of the military criminal courts in the investigation of their cases. In these cases, the Committee reminded the State party in question that it should take all measures necessary to guarantee in practice that such cases are tried, from the outset, by the ordinary courts. Where it was relevant, the Committee also requested the State party to ensure that the military authorities cooperated with civilian authorities, the latter of which must be in charge of the investigation and its coordination. This clarification is made with a view to preventing a situation in which, under the pretext of the prohibition of the intervention of military courts, military authorities might refuse to provide assistance or specific information under their control.

30. Need to further develop international legal assistance in the search for missing persons: in 10 urgent actions in which it was assumed that people had been disappeared in a country other than the country in which they had been last seen, the authors stressed their concern over the ineffective cooperation between the States concerned. In these cases, the Committee requested the State party to afford the required international legal assistance immediately, in accordance with article 14 of the Convention.

31. Lack of access by family and friends to information related to the search for a disappeared person and their participation in that search: in nearly all the urgent action requests registered, the authors referred to the difficulties encountered by the families and relatives in gaining access to information related to the investigation of an enforced disappearance and the search for the disappeared person, and in participating in the search and investigation. In these cases, the Committee reminded States parties of their treaty obligations, under articles 12 and 24 of the Convention, (a) to ensure that the families and relatives of disappeared persons have access to regular updates on the progress of the search and investigation process, including meetings with the authorities in charge of the cases, whenever they deem appropriate; and (b) to allow and support their effective participation in the search process.

32. Request for interim measures of protection: in the majority of requests for urgent action, authors required the adoption of interim measures to protect the family and relatives against threats and to allow them to continue the activities necessary in searching for and locating the disappeared person. In the vast majority of cases, the families and loved ones suffered intense pressure, often directly from the State authorities possibly involved in the events. They mentioned rounds being made or a strong presence around their homes, threatening telephone calls or letters, pressure on their children and direct threats not to report events or to abandon their search for the disappeared person. In some cases, the authors also reported physical threats to their representatives and the death of individuals directly involved in the search for the disappeared persons. The interim protection measures requested were granted when the information provided indicated that the persons concerned were facing a risk of irreparable harm to their lives or physical and psychological integrity. In every case, the State concerned was urged, before adopting any protection measures, to hear the needs and views of the individuals requiring protection.

F. Urgent actions discontinued, closed, or kept open for the protection of persons for whom interim measures have been granted

33. In accordance with the criteria adopted in plenary by the Committee at its eighth session:

(a) An urgent action is discontinued when the disappeared person has been located but is still detained, since that person is at particularly high risk of being disappeared and placed outside the protection of the law once again;

(b) An urgent action is closed when the disappeared person has been located and released, or has been found dead;

(c) An urgent action is kept open when the disappeared person has been located but the persons for whom interim measures have been granted are still under threat. In such cases, the intervention of the Committee is limited to following up on the interim measures.

34. Since its eleventh session, the Committee has closed three urgent actions in which the victims were found alive: five related to events that occurred in Mexico and one to events that occurred in Iraq. Therefore, at the time of the present note, a total of 13 urgent actions have been discontinued or closed: 3 urgent actions were discontinued (these related to disappeared persons who were located but remain in detention) and 10 urgent actions were closed (these related to disappeared persons who were found alive and released (8 cases), or who were found dead (2 cases)).

35. The Committee considers it necessary to maintain three actions open even though the disappeared persons have been found, because persons who were granted interim measures in the context of the urgent action are still under threat.